# BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CHARLES ADRIAN SULLIVAN 100 Braddock Street, #103 Frostburg, MD 21532

Registered Nurse License No. 452190

Case No. 2012-398

OAH No. 2012020267

Respondent

## **DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 29, 2012.

IT IS SO ORDERED October 29, 2012.

Raymond Mallel, President

Board of Registered Nursing

Department of Consumer Affairs

State of California

	1)		
1	Kamala D. Harris		
2	Attorney General of California JANICE LACHMAN		
3	Supervising Deputy Attorney General STERLING A. SMITH		
4	Deputy Attorney General State Bar No. 84287		
5	1300 I Street, Suite 125 P.O. Box 944255		
6	Sacramento, CA 94244-2550 Telephone: (916) 445-0378		
7	Facsimile: (916) 327-8643		
{	Attorneys for Complainant		
8	BEFORE THE BOARD OF REGISTERED NURSING		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11	In the Matter of the Accusation Against:	Case No. 2012-398	
12	CHARLES ADRIAN SULLIVAN 100 Braddock Street, #103	OAH No. 2012020267	
13	Frostburg, MD 21532 Registered Nurse License No. 452190	STIPULATED SURRENDER OF LICENSE AND ORDER	
14	Respondent.		
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16 17	IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:		
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19	<u>PARTIES</u> 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of		
20	Registered Nursing. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Sterling A. Smith, Deputy Attorney General.  2. Charles Adrian Sullivan (Respondent) is representing himself in this proceeding and		
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24	has chosen not to exercise his right to be represented by counsel.		
25	3. On or about March 31, 1990, the Board of Registered Nursing issued Registered		
26	Nurse License No. 452190 to Charles Adrian Sullivan (Respondent). The Registered Nurse		
27	License expired on March 31, 2012, and has not been renewed.		
28	28 ///		

1	Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree t	
2	be bound by the Decision and Order of the Board of Registered Nursing.	
3	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
4	DATED: 8/20/12 Males ADDIAN STELLINAN	
5	CHÂRLES ADRIAN SULLIVAN Respondent	
6		
7	<u>ENDORSEMENT</u>	
8	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted	
9	for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.	
10	Dated: Respectfully submitted,	
11	Attorney General of California	
12	JANICE LACHMAN Supervising Deputy Attorney General	
13	Wil And	
14	STERLING A. SMITH	
15	Deputy Attorney General  Attorneys for Complainant	
16	ALLO TREYS JOT COMPLETION	
.17		
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19	Stipulation.rtf	
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### **JURISDICTION**

4. Accusation No. 2012-398 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 27, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2012-398 is attached as Exhibit A and incorporated by reference.

## ADVISEMENT AND WAIVERS

- Respondent has carefully read, and understands the charges and allegations in
   Accusation No. 2012-398. Respondent also has carefully read, and understands the effects of this
   Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

#### CULPABILITY

- 8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2012-398, agrees that cause exists for discipline and hereby surrenders his Registered Nurse License No. 452190 for the Board's formal acceptance.
- 9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Registered Nurse License without further process.

#### CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing.

Respondent understands and agrees that counsel for Complainant and the staff of the Board of

Registered Nursing may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

- 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

### **ORDER**

IT IS HEREBY ORDERED that Registered Nurse License No. 452190, issued to Respondent Charles Adrian Sullivan, is surrendered and accepted by the Board of Registered Nursing.

1. The surrender of Respondent's Registered Nurse License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Registered Nursing.

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- 2. Respondent shall lose all rights and privileges as a registered nurse in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board his wall certificate and, if one was issued, his pocket license, on or before the effective date of the Decision and Order.
- 4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2012-398 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.
- 5. If and when Respondent's license is reinstated, he shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$9,709.40. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.
- 6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 2012-398 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.
- 7. Respondent shall not apply for licensure or petition for reinstatement for two (2) years from the effective date of the Board of Registered Nursing's Decision and Order.

### ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this

Exhibit A

Accusation No. 2012-398

1	KAMALA D. HARRIS		
.2	Attorney General of California ARTHUR D. TAGGART Supervising Deputy Attorney General		
3	STERLING A. SMITH		
4	Deputy Attorney General State Bar No. 84287		
5	1300 I Street, Suite 125 P.O. Box 944255		
6	Sacramento, CA 94244-2550 Telephone: (916) 445-0378		
7	Facsimile: (916) 327-8643 Attorneys for Complainant		
8	BEFORE THE		
9	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF CAI	LIFORNIA	
11	In the Matter of the Accusation Against:	ase No. 2012 - 398	
12	CHARLES A. SULLIVAN,		
13	1	CCUSATION	
14	Cumberland, MD 21502 Registered Nurse License No. 452190		
15	Respondent.		
16			
17	Complainant alleges:		
18	PARTI	<u>ES</u>	
19	1. Louise R. Bailey, M.Ed., RN ("Complaint of the Complaint of the Complai	nant") brings this Accusation solely in her	
20	official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),		
21	Department of Consumer Affairs.		
22	2. On or about March 31, 1990, the Board	issued Registered Nurse License Number	
23	452190 to Charles Adrian Sullivan, also known as Charles A. Sullivan ("Respondent").		
24	Respondent's registered nurse license was in full force and effect at all times relevant to the		
25	charges brought herein and will expire on March 31, 2012, unless renewed.		
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### STATUTORY AND REGULATORY PROVISIONS

- 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.
  - 5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof . . .

#### 6. Code section 2765 states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

### 7. Code section 490, subdivision (a), states:

In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. California Code of Regulations, title 16, section 1444 states, in pertinent part:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160 . . .

#### **COST RECOVERY**

9. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## **CAUSE FOR DISCIPLINE**

## (Criminal Conviction: Voluntary Manslaughter)

- 10. Respondent is subject to disciplinary action pursuant to Code sections 2761, subdivision (f), and 490, subdivision (a), in that on or about September 11, 2001, in the criminal proceeding titled *Commonwealth of Pennsylvania v. Charles Adrian Sullivan* (Ct. of Common Pleas, Bedford County, 2001, Criminal Action No. 20 for 2001), Respondent was convicted by a jury of voluntary manslaughter provocation by victim, 18 Pa.C.S.A. § 2503, subdivision (a)(1), and carrying a firearm without a license, 18 Pa.C.S.A. § 6106. On November 8, 2001, Respondent was sentenced to a term of incarceration of not less than 5 years or more than 10 years on the voluntary manslaughter conviction. Respondent was incarcerated in a Department of Corrections facility from approximately January 18, 2002, to January 1, 2011. The circumstances of the crime are set forth in paragraphs 11 and 12 below.
- 11. On or about January 1, 2001, the Pennsylvania State Police, Bedford Station, received a call that a man had been shot in the Beans Cove area. Troopers were dispatched to the area and

<sup>&</sup>lt;sup>1</sup> The court ordered that this sentence would run consecutively with the 1 to 3 year term imposed for the firearm offense. On February 6, 2002, the court ordered that the sentence on the firearms conviction would run concurrently with the sentence imposed on the voluntary manslaughter conviction.

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arrived on scene on January 2, 2001, at 0032 hours. The troopers observed a 1987 Volvo stationwagon on the east berm of State Route 3005. The vehicle was stuck in the snow. There was a deceased male, later identified as Michael Terance McElfish ("McElfish"), seated in the right front passenger seat. McElfish had an apparent gunshot wound to his face. A 30-30 lever action rifle and single action .357 magnum revolver were lying on the rear passenger seat as well as a spotlight. There was also a spent and live 30-30 rifle casing lying to the left rear of the vehicle. The troopers discovered Respondent at the scene. Respondent had blood spatter on his right hand and the right arm and shoulder of his coat. The troopers advised Respondent of his Miranda rights, and he agreed to waive his rights and answer questions.

12. On January 2, 2001, at 0305 hours, Respondent related the following in an audiotaped interview: Respondent had known McElfish for 4 days and had gone with him to a bar located in Cumberland. Respondent and McElfish then traveled into Pennsylvania with the intentions of shooting a deer using a spotlight. Respondent had his rifle and revolver with him in the vehicle. Respondent was driving and McElfish was in the right front passenger seat. McElfish became agitated and began to kick and punch the dash, doors, and sunroof. McElfish then started to trash the vehicle by hitting the roof and kicking the dash and windows. Respondent stopped the vehicle 2 miles south of the scene. He shot two rounds from his rifle over the top of the vehicle and ordered McElfish out of the car. McElfish continued to kick the vehicle. Respondent emptied the rounds out of his rifle and threw it in the back seat, then started driving again. McElfish ordered Respondent to turn the lights off on the vehicle. Respondent then drove off of the road and his vehicle became stuck on the embankment. Respondent exited the vehicle and demanded that McElfish leave his vehicle. McElfish would not get out of the vehicle. Respondent then obtained the .357 magnum from the back seat. McElfish asked Respondent if he was going to shoot him. Respondent told McElfish that he did not want to shoot him, but if he was going to do so, he would have shot him back there a mile or two. Respondent knew that the gun was loaded. McElfish then asked Respondent to shoot him. Respondent told McElfish that he was not going to shoot him, but just wanted him to get out of his car. McElfish then took the barrel of the revolver, pulled it towards him, and it fired. Respondent was asked when he cocked the gun.

1	Respondent stated that "On a single action, it's when you present it." Respondent also stated that		
2	he was unsure if he pulled the hammer back and that the revolver was in his right hand.		
3	Respondent stated that the muzzle of the revolver was an arm's reach away when the gun went		
4	off, that he was attempting to sit down when the gun went off, and that McElfish gave no reason		
5	why he wanted to kill himself. Respondent was asked if McElfish had assaulted him.		
6	Respondent stated that McElfish had come across the car and hit him on the side of the shoulder,		
7	head, and neck. Respondent was not observed to have any injuries to his arms, neck, or hands.		
8	PRAYER		
9	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,		
10	and that following the hearing, the Board of Registered Nursing issue a decision:		
11	1. Revoking or suspending Registered Nurse License Number 452190, issued to Charles		
12	A. Sullivan, also known as Charles Adrian Sullivan;		
13	2. Ordering Charles A. Sullivan, also known as Charles Adrian Sullivan, to pay the		
14	Board of Registered Nursing the reasonable costs of the investigation and enforcement of this		
15	case, pursuant to Business and Professions Code section 125.3;		
16	3. Taking such other and further action as deemed necessary and proper.		
17	Que Par		
18	DATED: <u>December 27, 2011</u> January Bernsen, RN		
19	Executive Officer Board of Registered Nursing		
20	Department of Consumer Affairs State of California		
21 .	Complainant Complainant		
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